

Senate Bill No. 392

CHAPTER 194

An act to amend Sections 5060, 5070, 5101.6, 5108, 5132, 5302.5, 5303, 5361, 10301, 10311.1, 10353, and 10366 of, to add Sections 5132.1, 5132.2, 5132.3, and 5132.4 to, and to repeal Sections 5108.1, 5108.2, 5220, 5221, 5222, 10310, 10310.2, and 10311 of, the Streets and Highways Code, relating to local agency assessments.

[Approved by Governor August 3, 2003. Filed with
Secretary of State August 4, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 392, Committee on Local Government. Local agency assessments.

Existing statutory law provides notice, protest, and hearing procedures for the levying of new or increased assessments by local government agencies pursuant to Articles XIII C and XIII D of the California Constitution. These statutory procedures supersede other statutory provisions applicable to the levying of these assessments.

This bill would conform certain provisions of the Improvement Act of 1911 and the Municipal Improvement Act of 1913 to the statutory procedures for levying assessments pursuant to Articles XIII C and XIII D of the California Constitution.

The people of the State of California do enact as follows:

SECTION 1. Section 5060 of the Streets and Highways Code is amended to read:

5060. The provisions of Chapter 1 (commencing with Section 6000) of Division 7 of Title 1 of the Government Code shall not have any application to any publication provided for in this division.

SEC. 2. Section 5070 of the Streets and Highways Code is amended to read:

5070. Whenever in this division notice is required to be given by mail, notice shall be given in accordance with the provisions of Section 53753 of the Government Code.

SEC. 3. Section 5101.6 of the Streets and Highways Code is amended to read:

5101.6. Following the levy of an assessment pursuant to this division to pay, in whole or in part, the costs and expenses of works, system or facilities authorized by subdivision (a) of Section 5101.5 upon

a district benefited thereby, and annually on or before June 30th, the legislative body may prepare and approve an estimate of the expenditures required during the ensuing fiscal year for the maintenance, operation, repair and improvement of such works, system or facilities and shall deduct from such estimate the amount of revenues, if any, which the legislative body estimates will accrue during such year from the operation of such works, system or facilities and will be available to pay costs of such maintenance, operation, repair and improvement.

The legislative body may increase the assessment in accordance with the provisions of Section 53753 of the Government Code. The proceeds of the assessment shall be placed in a separate fund of the city and shall be expended only for the maintenance, operation, repair or improvement of such works, system or facilities.

SEC. 4. Section 5108 of the Streets and Highways Code is amended to read:

5108. Approval of the owners of land for any improvements specified in Section 5101.4 shall be secured in accordance with the provisions of Section 53753 of the Government Code.

SEC. 5. Section 5108.1 of the Streets and Highways Code is repealed.

SEC. 6. Section 5108.2 of the Streets and Highways Code is repealed.

SEC. 7. Section 5132 of the Streets and Highways Code is amended to read:

5132. The resolution of intention shall be sufficient if it states in general terms the class or kinds of work contemplated, such as grading, paving, sewerage and other work, and gives in general the location of the proposed work and refers to plans, profiles, detailed drawings and specifications or such of them as may be suitable or proper for the full and detailed description of the proposed work, and if it refers to any agreement entered into pursuant to Section 5103. The resolution of intention shall contain also a notice of the day, hour, and place of the public hearing where any and all persons having any objections to the proposed work or work and acquisition may appear before the legislative body and show cause why the proposed work or work and acquisition should not be carried out in accordance with the resolution of intention.

The notice shall also contain the name and telephone number of a local department or agency designated by the legislative body to answer inquiries regarding the hearing proceedings. That notice shall be omitted if the hearing of objections is not required as provided hereunder. The hearing of objections shall not be less than 45 days from the date of the passage of the resolution.



SEC. 8. Section 5132.1 is added to the Streets and Highways Code, to read:

5132.1. In addition to the notice included in the resolution of intention, the legislative body shall give notice by mail to the record owner of each identified parcel prior to levying a new or increased assessment, or an existing assessment that is subject to the procedures and approval process set forth in Section 4 of Article XIII D of the California Constitution. Each such notice shall comply with the provisions of subdivision (b) of Section 53753 of the Government Code.

SEC. 9. Section 5132.2 is added to the Streets and Highways Code, to read:

5132.2. Each notice sent pursuant to Section 5132.1 shall contain an assessment ballot that includes that legislative body's address for receipt of the form and a place where the person returning the assessment ballot may indicate his or her name, a reasonable identification of the parcel, and his or her support or opposition to the proposed assessment. The form of the assessment ballot shall comply with the provisions of subdivision (c) of Section 53753 of the Government Code.

SEC. 10. Section 5132.3 is added to the Streets and Highways Code, to read:

5132.3. At the time, date, and place stated in the notice mailed pursuant to Section 5132.1, the legislative body shall conduct a public hearing upon the proposed assessment in accordance with the provisions of subdivision (d) of Section 53753 of the Government Code. At the conclusion of the public hearing, the legislative body shall tabulate the assessment ballots submitted and not withdrawn, in accordance with the provisions of subdivision (e) of Section 53753 of the Government Code. If there is a majority protest against the imposition of a new assessment, or the extension of an existing assessment, or an increase in an existing assessment, the legislative body shall not impose, extend, or increase the assessment.

SEC. 11. Section 5132.4 is added to the Streets and Highways Code, to read:

5132.4. If the legislative body has complied with the notice, protest, and hearing provisions set forth in this article, or if the legislative body is not required to comply with those requirements because the assessment is exempt from the procedures and approval process set forth in Section 4 of Article XIII D of the California Constitution, then those requirements shall not apply in subsequent fiscal years unless the assessment methodology is changed to increase the assessment, or the amount of that assessment is proposed to exceed an assessment formula or range of assessments adopted by an agency in accordance with Article



XIII D of the California Constitution or Section 53753 of the Government Code.

SEC. 12. Section 5220 of the Streets and Highways Code is repealed.

SEC. 13. Section 5221 of the Streets and Highways Code is repealed.

SEC. 14. Section 5222 of the Streets and Highways Code is repealed.

SEC. 15. Section 5302.5 of the Streets and Highways Code is amended to read:

5302.5. If the legislative body, in the resolution of intention, declares that any lot or parcel of land owned and used as provided in Section 5301 shall be included in the assessment, or if no declaration is made respecting any such lot or parcel of land then any assessment upon such lot or parcel of land shall be an enforceable obligation against the owner of such property and shall be paid, within 30 days after the date of recording the assessment, by the officer, officers, or board having charge of the disbursement of the funds of the owner of such lot or parcel of land and, if not paid within said 30 days, shall bear interest until paid at the rate stated in the resolution of intention for the bonds proposed to be issued, and if no bonds are proposed to be issued then at the rate of not more than 7 percent per annum until paid; provided, however, that if said assessment is not paid within said 30-day period the city may, and if the city has so provided in its resolution of intention shall, at the expiration thereof, forthwith advance the necessary sum and pay the assessment and shall collect the amount of said assessment and interest thereon from the said obligated owner and may enforce the collection thereof by writ of mandate or other proper remedy. If for any reason there are not moneys available for the payment of said assessment, then the legislative body of the public entity which owns said property so assessed may elect to cause said assessment to be payable in a number of installments not to exceed the number of installments of and at the same interest rate as bonds issued in the proceedings creating the assessment, or if no bonds are to be issued, for a number of installments not to exceed the number of installments of annual payments as provided by Section 6462 of this code for payment of bonds issued under the provisions of this division and for a rate of interest to be specified. In the event the legislative body of the entity whose property is assessed decides that said assessment shall be payable in installments, then the officer, officers or board whose duty it is to levy taxes for said obligated owner, including school districts but not limited thereto, shall include in the next tax levy an amount, in addition to moneys for all other purposes, sufficient to pay the annual installment of principal and interest upon



said assessment with interest on the unpaid principal of the assessment to date of the payments, and shall include in each succeeding tax levy a like amount or more, in addition to moneys for all other purposes, until the principal of said assessment and all interest on unpaid portions thereof, shall be paid in full. In the event the officer, officers, or board whose duty it is to levy taxes fails to discharge the principal of the assessment and the interest thereon, the owner of the assessment may compel the levy thereof in the manner hereinabove set forth by writ of mandate. No statute of limitations shall bar any right provided for herein to enforce the collection of an assessment of the type described herein and any interest due thereon until four years after the due date of the last principal payment due upon said assessment. The owner of an assessment described herein may use mandamus or other appropriate remedy to compel the officer, officers or board whose duty it is to levy taxes for said obligated owner to levy an amount in a given year equal to the amount necessary to pay the installment of principal and interest on the assessment in said year, and may continue to use mandamus or other remedy to cause like installments of the amount of principal and interest accruing to be levied each year until the whole of the assessment due has been paid.

If the owner of an assessment is successful in any action to compel the levy of a tax under this section he shall be awarded reasonable attorneys' fees as fixed by the court and costs and said attorneys' fees and costs shall be included in said tax levy.

SEC. 16. Section 5303 of the Streets and Highways Code is amended to read:

5303. If the legislative body, in the resolution of intention, declares that any lot or parcel of land used as provided in Section 5301 and owned by the United States or any department thereof or the State of California or any department thereof shall be included in the assessment, then the city shall be liable for such sum as may thereafter be assessed against such lot or parcel of land and which is unpaid after 30 days from the recordation of the assessment. Such sum shall be payable by the city out of the general fund unless the legislative body shall in its resolution of intention designate another fund. The foregoing provisions of this section shall not apply to any assessment pursuant to Chapter 14 (commencing with Section 5320) of Part 3 of this division against any such land owned by the State of California or department thereof, but the city shall advance the amount of any such assessment in such assessment proceedings and shall in such case become the owner of such assessment and entitled to repayment of such amount with interest thereon at the rate provided in that chapter from the State of California or any department thereof.



SEC. 17. Section 5361 of the Streets and Highways Code is amended to read:

5361. The assessment shall briefly refer to the contract, the work contracted for and performed, and shall show the amount to be paid therefor, together with all incidental expenses, the amount of each assessment against each lot or portion of a lot, the number of each lot or portion or portions of a lot so assessed, the additional information required by subdivision (b) of Section 53753 of the Government Code, and shall have attached thereto a diagram exhibiting each street or street crossing, place, property or rights of way on which any work has been done, showing the relative location of each lot or portion of lot to the work done, numbered to correspond with the numbers of the assessments.

SEC. 18. Section 10301 of the Streets and Highways Code is amended to read:

10301. After passing on the report, the legislative body shall by resolution appoint the time and place for hearing protests to the proposed assessment and shall cause notice of that hearing and a public meeting required by Section 54954.6 of the Government Code to be mailed as provided in subdivision (c) of that section. If new, increased, or extended assessments are proposed, the legislative body shall comply with the notice, protest, and hearing procedures in Section 53753 of the Government Code.

SEC. 19. Section 10310 of the Streets and Highways Code is repealed.

SEC. 20. Section 10310.2 of the Streets and Highways Code is repealed.

SEC. 21. Section 10311 of the Streets and Highways Code is repealed.

SEC. 22. Section 10311.1 of the Streets and Highways Code is amended to read:

10311.1. If it shall be necessary, in order to find whether a majority protest exists, to determine whether any or all of the signers of written protests are the “owners” of property to be assessed, the legislative body shall make such determination from the last equalized assessment roll. The legislative body shall be under no duty to obtain or consider any other evidence as to ownership of property and its determination of ownership shall be final and conclusive.

SEC. 23. Section 10353 of the Streets and Highways Code is amended to read:

10353. Before ordering any changes made, other than as provided in Section 10352, the legislative body shall adopt a resolution briefly describing the changes proposed to be made, stating the amount of the



estimated increase or decrease in the cost of the improvement by reason of the proposed changes and giving notice of a time and place when and where any interested person having any objection to the changes proposed to be made may appear before the legislative body and show cause why the changes should not be ordered. The resolution shall also contain the name and telephone number of a local department or agency designated by the legislative body to answer inquiries regarding the hearing proceedings. The resolution may describe the changes by referring to maps, plats, plans, profiles, detailed drawings, or specifications on file in the office of the clerk of the legislative body or engineer, which shall indicate the changes proposed to be made and which shall govern for all details thereof. The resolution shall be published pursuant to Section 6061 of the Government Code, at least 10 days prior to the date of the hearing. If new, increased, or extended assessments are proposed, the legislative body shall comply with the notice, protest, and hearing procedures in Section 53753 of the Government Code.

SEC. 24. Section 10366 of the Streets and Highways Code is amended to read:

10366. (a) For purposes of proceeding under this chapter, the notice shall contain the following elements:

(1) A statement of the time, place, and purpose of the hearing on the resolution of intention and report.

(2) A statement of the total estimated cost of the proposed improvement and of the maximum cost of the improvement.

(3) The estimated and maximum amounts, as shown by the report, to be assessed against the particular parcel covered by the notice.

(4) A statement that any person interested may file a protest in writing as provided in this division.

(b) If new, increased, or extended assessments are proposed, the legislative body shall comply with the notice, protest, and hearing procedures in Section 53753 of the Government Code.

